

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 17-cr-30052-SMY
)	
MICHAEL D. KING,)	
)	
Defendant.)	

ORDER

YANDLE, District Judge:

This matter is before the Court on Defendant Michael D. King’s “Motion for Belated Notice of Appeal” (Doc. 84). King asserts claims of ineffective assistance of counsel and prosecutorial misconduct and seeks to appeal his sentence. Upon review of the filing, the Court has determined that the relief King seeks is only available through a motion filed pursuant to 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255.

The Court is hesitant to construe King’s filing as a § 2255 motion without a clear indication that he intends to invoke that statute. That is because “the court cannot so recharacterize a *pro se* litigant’s motion as the litigant’s first § 2255 motion *unless* the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law’s ‘second or successive’ restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing.” *Castro v. United States*, 540 U.S. 375, 377 (2003).

Accordingly, King is **WARNED** that if he does not file a motion to withdraw or amend his filing (Doc. 84) on or before **April 2, 2021**, the Court will construe it as a § 2255 motion and direct

the Clerk of Court to open a new civil case. King will then be subject to the second or successive filing requirements contained in 28 U.S.C. § 2255(h).

IT IS SO ORDERED.

DATED: March 2, 2021

The image shows a handwritten signature in black ink that reads "Staci M. Yandle". The signature is written over a circular official seal. The seal features an eagle with a shield, holding an olive branch and arrows, with a constellation of stars above its head. The text "UNITED STATES DISTRICT COURT" is arched across the top, and "SOUTHERN DISTRICT OF NEW YORK" is arched across the bottom.

STACI M. YANDLE
United States District Judge